

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 243 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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RASHMIKANT SOMNATH

Versus

EMPLOYEES' STATE INSURANCE CORPORATION  
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Appearance:

MR JAYESH PATEL for MR.MI PATEL for Appellant  
MR SR SHAH for Respondent No. 1  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 15/12/2000

ORAL JUDGEMENT

1. The appellant, who had sustained employment injury, by filing this appeal under Section 82 of the Employees' State Insurance Act, 1948 ('Act' for short), has challenged legality and validity of the judgment and order dated October 18, 1982, passed by the Employees'

Insurance Court, Ahmedabad, in Second Appeal (ESI) No.77 of 1981.

2. The appellant was working in Manjushree Textile Mills, Ahmedabad, as labourer. The appellant had sustained employment injury on September 15, 1978. The appellant was referred to the Medical Board and the Medical Board had, by its decision dated March 31, 1981, assessed permanent disability of the appellant at 'zero' per cent. The assessment of permanent disability at 'zero' per cent was challenged by the appellant by filing an appeal before the Appellate Tribunal being Appeal MAT No.257 of 1981. The Appellate Tribunal, by its decision dated August 6, 1981, upheld the decision of the Medical Board. The appellant had challenged the order of the Appellate Tribunal in the Employees' Insurance Court by filing Second Appeal (ESI) No.77 of 1981. The Employees' Insurance Court concluded that the appellant had remained under treatment for 46 days and he was paid T.D.B. allowance for 46 days. It was observed that the Medical Board after examining the appellant found that there was no permanent disability which was assessed at 'zero' per cent. The Court observed that the Appellate Tribunal had also examined the injuries sustained by the appellant and had agreed with the opinion of the Assessors and had dismissed the appeal. The Court, further, observed that the appellant was temporarily disabled from September 15, 1978 to October 28, 1978, i.e. for 46 days and he was, accordingly, paid T.D.B. allowance for the entire period. The Court finally concluded that there was nothing in the evidence before it to show that the findings of the Medical Board or the Tribunal were erroneous or that after the medical treatment, there existed some disability of permanent nature in any of the fingers of the appellant. On the basis of abovereferred to conclusion, the Employees' Insurance Court, by its order dated October 18, 1982, dismissed the appeal filed by the appellant, which has given rise to filing of this appeal by the appellant under Section 82 of the Act.

3. Before going into the merits of the appeal, it would be relevant to refer to Section 82 of the Act.

"82 Appeal

(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the high Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of Sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section."

As per sub-section (2) of Section 82 of the Act, an appeal from an order of an Employees' Insurance Court only lies in the High Court, if it involves a substantial question of law. In this appeal, in my view, no substantial question of law is involved. The only point which has been argued by the learned counsel for the appellant is that the appellant had sustained permanent disability in the employment injury sustained by him. Whether the appellant had sustained injury, which has resulted in permanent disability, is a pure question of fact. No law point is involved in that question. When the Medical Board as well as the Appellate Tribunal have found that the appellant had not sustained further disability as a result of employment injury, this Court cannot go into finding of fact arrived at by the Medical Board and the Tribunal. The Medical Board and the Tribunal had thoroughly examined the appellant with regard to the injuries sustained by him and found that the permanent disability was 'zero' per cent. This being a pure finding of fact, in my view, no substantial question of law is involved and, therefore, the appeal is liable to be dismissed.

4. For the foregoing reasons, the appeal is dismissed with no order as to costs.

(M.H.Kadri, J.)

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(swamy)